

PROSECUTOR GENERAL

versus

CATHERINE LAJI in her capacity as Executrix Dative in the
Estate Late TAPFUMANEYI ZUNGUZA

and

CATHERINE LAJI

HIGH COURT OF ZIMBABWE

ZHOU J

HARARE, 10 November 2021 & 20 July 2022

Court Application

C Mutangadura, for the applicant

G R J Sithole, for the respondents

ZHOU J: This is a court application for a civil forfeiture order. The application was instituted in terms of s 80 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*]. The application is opposed by the respondents.

The application pertains to three immovable properties and one motor vehicle. The immovable properties are Stand 237 Helensvale Township Borrowdale Harare, Stand 3807 Mainway Meadows Waterfalls Harare and 3808 Mainway Meadows Waterfalls Harare. The motor vehicle is a Mazda BT50 Twin Cab with Registration Numbers ACT 3233. The applicant's case is that the property referred to above is tainted and must be forfeited to the state.

The now deceased whose estate is being represented herein by the first respondent and the second respondent were employed by the Zimbabwe Revenue Authority. The deceased Tapfumaneyi Zunguza was employed as a Revenue Supervisor while the second respondent was employed as a Revenue Officer. The two were husband and wife. The evidence tendered by the applicant shows that the three immovable properties were acquired during the same year, 2009. Construction work at the three properties commenced in 2011 and was completed in 2013. The motor vehicle was acquired in 2011 at a purchase price of USD 40 000.

The total cost of acquiring the property is USD 102 110, against the two respondent's lawful income of USD 60 053.13. This is the reason why the applicant submits that the property was acquired in circumstances tainted by unlawfulness.

The respondents' defence apart from raising legal issues, pertaining to the law deployed to seek the declaration in relation to the property and its forfeiture, is an explanation of how the property was acquired. The respondents' case is that the three immovable properties belong

to one Ali Manjengwa who is based in the United Kingdom, and the respondents acted in terms of a power of attorney given to the deceased Tapfumaneyi Zunguza by Ali Manjengwa. As for the motor vehicle, their case is that it was purchased by Kristine Zunguza, a sister-in-law of the late Tapfumaneyi Zunguza.

There are factual disputes which must be resolved one way or the other in this case. These disputes pertain to whether the immovable properties were purchased on behalf of Ali Manjengwa or they belong to the respondents, whether the motor vehicle belongs to and/ or was purchased by Kristine (sometimes referred to in the papers as Christine) Zunguza. There is also a dispute regarding when, if at all, the construction on the immovable properties was completed. The respondents state that the construction of the Helensvale structure is not yet completed. These disputes of fact are material insofar as they relate to the very properties which are the subject of the application.

The position of the law where there are material disputes of fact which cannot be resolved on the papers in motion proceedings is settled. Where there is a material dispute of fact which cannot be resolved on the papers the Court has a discretion as to the future course of the proceedings. It can refer the matter to trial or call for and hear the evidence or dismiss the application, see *Masukusa v National Foods Ltd & Anor* 1983(1) ZLR 232(H) at 234D-F; *Mashingaidzev Mashingaidze* 1995(1) ZLR 219(H) at 222B-G; *Adbro Investment Co Ltd v Minister of the interior* 1956(3) SA 345(A) at 350A. The Court will usually dismiss the application when the applicant should have realised the existence of material disputes of fact at the time of instituting the application.

In casu the disputes of fact would not have been apparent to the applicant given the existence of documents showing that the purchasers of the property in issue were the applicants. Without going beyond those documents, one would not become aware of the explanations being tendered by the respondents now regarding how the properties were acquired and their title to them. For these reasons, it would be appropriate for the matter to be referred to trial. Also, there is the issue that the applicable law seems to envisage that forfeiture must be sought on application to this court, which fact excuses the applicant from the consequences of any realisation by him that there would be material disputes of fact.

Mr *Mutangadura* for the applicant submitted that the dispute of fact is fictitious and invited the court to draw inferences against the respondents for the failure to attach affidavits from the persons named as having provided the funds to purchase the properties. Clearly the dispute is not illusory because it relates to the very subject of the application, whether the

property was acquired by the respondents and in tainted circumstances. The supporting affidavits of Ali Manjengwa and Kristine Zunguza would not have resolved the disputed facts, but would have merely added to it.

The question of whether the Act and Regulations relied upon to seek forfeiture apply retrospectively can be determined at the trial because this issue will depend on the conclusion regarding the acquisition of the property. In other words, if the court determines that the immovable properties and the motor vehicle do not belong to the respondents then the question of whether the Act and Regulations apply to them will not arise.

In the result, IT IS ORDERED THAT:

1. This matter is to be referred to trial, with the Court Application standing as the summons and the notice of opposition standing as the Notice of Appearance to Defend.
2. The applicant herein shall file the plaintiff's declaration within 10 days after the date of this order.
3. Thereafter, the filing of subsequent pleadings and other procedures shall be in terms of the rules of this court.
4. Costs shall be in the cause.

National Prosecuting Authority, applicant's legal practitioners
Gumbo & Associates, respondent's legal practitioners